IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2006

CORAM

THE HONOURABLE MR. JUSTICE P. JYOTHIMANI

W.P.No.834 of 1998

B.Bhaskaran .. Petitioner

Vs

1. The Presiding Officer,
   I Addl.Labour Court,
   High Court Buildings,
   Chennai 104.

2. The Management of Tractors and
   Farm Equipment Limited,
   145, Sterling Road, Nungambakkam,
   Chennai 34. .. Respondents

Petition filed under Article 226 of the Constitution of Indi praying to issue a writ of certiorari to call for the records an papers from the files of the first respondent in I.D.No.841 of 199 and quash its impugned award dated 31.3.1997 in so far as the firs respondent has denied the relief of reinstatement in service, wit back wages with continuity of service and all other and attendant an consequential benefits to the petitioner and to award costs of thi writ petition.

For Petitioner : Mr.K.M.Ramesh
For Respondents: Mr.Sanjay Mohan
for M/s Ramasubramaniam Associates

ORDER

This writ petition is directed against the award passed b the First Additional Labour Court, Madras dated 31.03.1997 passed i I.D.No.841 of 1990, dismissing the petition filed by the workma holding that the removal of the petitioner from service by th Management is valid and proper and the petitioner is not entitled fo reinstatement, however, awarding a compensation of Rs.40,000/- to th petitioner from the Management for the reason that till the date o suspension, the petitioner has worked for five years under th Management. While the second respondent - Management has no challenged the award in respect of the grant of compensation to th petitioner, the petitioner-workman had challenged the award.

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2. The case of the petitioner is that he has joined under th second respondent Management as a Casual Labourer on 14.11.1981 an his last drawn salary was Rs.700/- per month. The petitioner wa working as an Attender in the Stores Department. The secon respondent instead of regularising the services of the petitioner ha been keeping the petitioner as a casual employee. The secon respondent has placed the petitioner under suspension on 17.02.198 pending enquiry. Thereafter, a charge sheet dated 02.03.1987 wa served on the petitioner alleging that there were shortages in th Stores and a suspicion has arisen of the petitioner aiding an abetting theft of materials in the Stores. The charge is said to hav been framed based on the report given by the Manager (Spar Parts) one Mr.N.Sridhar. The said person is stated to have mentione that on a reconciliation of the annual inventory and physical stock shortage of materials was found. One Mr.N.Ramanathan, Law Officer wa appointed as an Enquiry Officer. In respect of the theft, polic complaint was given against four employees. However, there was n complaint against the petitioner and there was no interrogation by th police at any point of time. In the charge sheet laid before th Chief Metropolitan Magistrate, Egmore four persons wer arrayed as accused, namely, 1. N.Janakiraman, Mazdoor/Helper, 2 S.V.Ramasubramaniam, Assistant Store Keeper, 3. A.Janakiraman, Store Supervisor and 4. L.L. Devotta Assistant Materials Receiving Sectio and the petitioner was not an accused in the criminal case. Durin the domestic enquiry, the petitioner has required production of copie of some of the documents like police complaint preferred by th Manager Sridhar, final report of police investigation etc., and th said documents were not furnished. According to the petitioner, th charge itself is vague and not specific in nature and given on th basis of suspicion.

3. In the domestic enquiry, on the Management side thre witnesses were examined, out of whom M.W.1 the complainant N.Sridhar who has stated that one Police Officer visited his office and h informed M.W.1 that N.Janakiraman, Mazdoor/Helper who was the firs accused in the criminal case was interrogated and he has given confession statement stating that he committed theft along with th assistance of others. The said M.W.1 has also stated that h understood from the said Officer that the petitioner B.Bhaskaran wa one of the persons named by Janakiraman and therefore, a charge shee is levelled against the petitioner as if he has abetted the offence Neither the confession statement stated to have been given by the sai Janakiraman was produced in the domestic enquiry nor the sai Janakiraman was examined as a witness. According to the petitioner in any event, any confession given before the police is not a vali document. Apart from the said M.W.1 there were two more witnesse examined namely Mr.J.P.Rossvan, Chief Security Officer as M.W.2 an Mr.S.Vinod Kumar, Parts Eecutive as M.W.3. According to th petitioner, the said M.Ws.2 and 3 have not made any allegation agains

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the petitioner. In spite of all the discrepancies, the Enquir Officer has concluded, as if the charge against the petitioner ha been proved. It is also the case of the petitioner that the secon respondent Management being a big concern which is connected wit Simson Group of Companies and the Stores Department is manned by man security men round the clock with a strict watch and vigil, no one ca very easily enter into the premises. In such circumstances, it i stated that about 8587 numbers of nozzles valued about Rs.5,00,000/ were stolen from the Stores Department. There was no opportunit given to the petitioner to peruse the relevant registers and th ledgers to prove his innocence before the Labour Court. Even thoug the petitioner has attacked the very validity of the domestic enquiry an endorsement has been made saying that he is not questioning th validity of the domestic enquiry on the ground that the petitioner ha got a good case on merits. In those circumstances, the Labour Cour has misconstrued the endorsement as if the petitioner has accepted th finding of the Enquiry Officer and proceeded as if what remained wa only to decide about the quantum of punishment.

4. The award of the Labour Court is questioned on many lega grounds including that the Labour Court has abdicated its power an jurisdiction, that the Labour Court has merely repeated the argument advanced before it and has not given cogent reasons for arriving at conclusion, that the Labour Court has failed to appreciate that merel having a suspicion cannot be a ground for framing charge as it ha been laid down in the hierarchy of judgments, that the Labour Cour has failed to appreciate the purpose of endorsement which is not i effect accepting the guilt or charge and therefore, the conduct of th Labour Court in proceeding with the quantum of punishment is not vali in law, that the Labour Court has failed to give any reason for th purpose of arriving at a conclusion that the removal of the petitione from service is valid, that the Labour Court has failed to appreciat that there was absolutely no evidence in the domestic enquiry to hol the petitioner guilty, that the Labour Court has failed to appreciat that none of the witnesses examined on the Management side during th domestic enquiry have stated that they have seen the petitione involved in the committing of theft, that the Labour Court has no appreciated that even as per the complainant M.W.1, he only heard Police Officer stating that Janakiraman has confessed that he and som other persons were involved in theft and that is presumed to be th petitioner and therefore, by no stretch of imagination the petitione could be implicated in the incident, that the Labour Court has faile to appreciate that out of four persons who were implicated in th criminal case, the petitioner was never made either in the Firs Information Report or in the charge in the criminal case and eve among the four persons in the criminal case, one S.V.Ramasubramania was neither suspended nor disciplinary action was taken against hi and that the Labour Court has not passed orders by proper applicatio of mind.

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5. Mr.K.M.Ramesh, learned counsel appearing for the petitione would submit that the impugned award has been passed withou appreciating the evidence properly. According to him, there is n legal evidence specifically implicating the petitioner in th misconduct. The learned counsel would submit in this regard that th evidence of M.Ws. 1 and 2 are hearsay evidence. M.W.1 who is complainant only says that one of the Police Officers have informe him that Janakiraman, Mazdoor/Helper who was the first accused in th criminal case has confessed before the Police Officers that alon with him, some other persons were involved and it was suspected tha the petitioner is one such person. Therefore, according to th learned counsel for the petitioner, this is not the evidence at al against the petitioner and it is not even a hearsay evidence especially in the circumstances that the said Janakiraman has neve been examined and in fact the said Janakiraman himself was acquitte in the criminal case. That apart, according to the learned counse for the petitioner, the evidence of M.W.2 is also general in natur and that cannot be sufficient to conclude that the petitioner wa involved in the offence. The learned counsel would further conten that the charge framed against the petitioner is vague. A reading o the entire charge shows that it revolves round on the basis o suspicion. That apart, the copies of the police complaint were no produced even in the domestic enquiry or before the Labour Court. Th learned counsel would further submit that the copy of the final repor of the Police has not been produced either in the domestic enquiry o before the Labour Court. The learned counsel would also submit tha even assuming that there is a loss of confidence of the employe towards the petitioner being the employee, the same is not pleaded an proved. Even a reference to the counter filed before the Labour Cour shows that even though there is a reference about the loss o confidence, there is absolutely no evidence in that regard. Th suspicion and probabilities alone cannot be the ground of loss o confidence. To support his contention in that regard, the learne counsel has relied upon the judgment of the Supreme Court reported i 1978 II LLJ 84 apart from the Division Bench judgments of this Cour reported in 1985 1 LLJ 46 and 1987 WLR 69, in support of hi contention that hearsay evidence cannot be a ground and it cannot b treated as a material evidence. The learned counsel also relied upo the judgments reported in 2002(2)LLN 709 [Management of Engine Valves Ltd., Chennai vs. Presiding Officer, First Additional Labour Court Madras and another], 1999(8)SCC 582 [Hardwari Lal vs. State of U.P And others] apart from 1999(2)SCC 10 [Kuldeep Singh vs. Commissione of Police and others].

6. On the other hand, Mr.Sanjay Mohan for M/s Ramasubramania Associates, learned counsel on behalf of the second responden Management would contend that the charge framed against the petitione was not that he has committed the offence of theft. It was based o

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the strong suspicion that the petitioner has abetted and helped th employees who were involved in organised theft of property. Accordin to him, by such a strong suspicion, especially the circumstance tha in fact the theft has been committed in an organised manner by a grou of employees, there is certainly a loss of confidence of the secon respondent Management towards the petitioner. According to him, whe once there is a loss of confidence on the part of the employer, th only duty that is imposed on the employer is to conduct a domesti enquiry in a fair manner, based on which any further order can b passed. He would further contend that when once the domestic enquir is conducted in a proper manner and order of termination is passed even if the order of termination is wrong, the workman cannot clai reinstatement. In that regard, the learned counsel relied upon th judgment reported in 1985 II LLN 582 [Chandu Lal vs. Pan America World Airways Inc.]. The learned counsel would also specificall contend that M.W.1 has categorically stated in the cross examinatio that he has no enmity against the petitioner at all, which is no denied. He would further state that even the petitioner as W.W.1 ha admitted that he was aware of shortages. Therefore, the decisio taken against the petitioner is bona fide. In that regard, he woul also submit that the petitioner has in fact waived his right o raising preliminary objection regarding the correctness of th domestic enquiry, by making a specific endorsement and in suc circumstances, it should be presumed that the petitioner has no lega ground against the domestic enquiry and therefore, even assuming tha based on the domestic enquiry report, the petitioner is terminated, i should be treated as bona fide and that cannot be a ground fo reinstatement, since it is a case of loss of confidence. The learne counsel in this regard has relied upon the judgment of this Cour reported in 2003(2)LLN 796. It is also admitted that the othe employees namely Janakiraman who was the first accused acquitted i the criminal case has resigned and it is stated that he was pai Rs.8,00,000/- of compensation for the 22 years of service rendered b him. That apart, one other accused Sridhar was dismissed from service The learned counsel would submit that it is considering the 5-1/ years of service by the petitioner, the amount of Rs.40,000/- wa correctly arrived at, which the learned counsel of the secon respondent is not opposing.

7. I have heard the learned counsel for the petitioner as well a the learned counsel for the second respondent and perused the entir records.

8. On the face of it, in this case, the conducting of domesti enquiry by the second respondent is admitted and it is also admitte that before the Enquiry Officer three witnesses were examined, apar from full participation by the petitioner. Even though in the clai statement filed by the petitioner in the Labour Court, the petitione has raised objection about the legality of the enquiry proceeding

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conducted by the Enquiry Officer, as it is seen in the award passed b the Labour Court, the counsel for the petitioner has made th following endorsement before the Labour Court on 11.07.1996. Th endorsement was as follows:

> "Petitioner prays that this Hon'ble Court may be pleased to hear the arguments in the I.D. Under Section 11-A, since petitioner is waiving the preliminary issue."

Therefore, it is clear that as far as the preliminary issue regardin the validity of domestic enquiry, the same was not pressed by th petitioner-workman. It is true that the same cannot be taken as i the petitioner has accepted the charge framed against him nevertheless it remains the fact that it is not open to the petitione to go back to question the validity procedure followed in the domesti enquiry. Therefore, the presumption is that the domestic enquiry wa properly held by the Enquiry Officer. However, the contention of th learned counsel for the petitioner is that the Enquiry Officer has no appreciated the evidence of witnesses properly, especially in th circumstances that there was absolutely no evidence against th petitioner by any one of the witnesses to show that the petitioner ha abetted the commission of offence of theft by the other employees. H would emphatically argue that the evidence of M.W.1 who is th complainant, cannot be even taken as a hearsay evidence. On the othe hand, it is a remotest of possibility by saying that one Polic Officer has informed him that during the course of interrogatio Janakiraman, the first accused has confessed that some other person were involved in the offence and the petitioner is suspected to be on of the such other persons. It is true that it can be termed as a n evidence at all, but then the fact remains that even as per th evidence of the petitioner as W.W.1 it is specific that he has n enmity with any of his co-workers or higher ups in the Department an that was his specific admission in the cross examination. He woul further state in the cross examination that even though he was no aware of the magnitude of the shortage but was aware that there wa shortage noticed during the inventory. His evidence is in th following words:

> "As far as I am concerned, I was not aware about the magnitude of the shortage, but was aware that there was shortage noticed during the inventory."

That apart, the findings of the enquiry as well as the statement o examination of witnesses taken during the time of domestic enquiry an a perusal of the entire documents would show that the petitioner ha been given full opportunity to cross examine the witnesses who hav deposed against him.

9. Now, if we refer to the actual charge which has been levelle against the petitioner as it is seen in the order of the secon respondent Management dated 02.03.1987, the crux of the charge appear

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to be as follows:

> "It is reported by the Manager-Spare Parts that you have been assisting the Storekeeper and you have access to the Stores and you have been handling materials in the Stores everyday. It is further reported and the Management is having strong suspicion that you are involved in the theft and that you have abetted and helped the employees who were involved in the organised theft of the Company's property."

10. Therefore, as rightly pointed out by the learned counsel fo the second respondent, the crux of the charge is not as if th petitioner has committed theft, but there is a strong suspicion tha he has abetted commission of theft by some other employees. In thi regard, it is relevant to point out, as I have stated earlier, that i is the admitted case of the petitioner during his cross examinatio that no one of his co-workers, including the witnesses examined on th Management side, were any inimically disposed towards him and that th reading of his evidence in the cross examination shows that in fact h has admitted that he was aware of the shortages in the store room even though at one stage he has stated that his knowledge was onl after the date of suspension. But in the other place he has admitte about the knowledge, but not aware of the actual magnitude of theft however, he also said that both the statements are correct. It i also not in dispute that the petitioner was at relevant point of tim working as a casual labourer/attender posted in the Stores Department The second respondent Management by the earliest communication date 17.02.1987 has informed the petitioner that there was a theft of stoc to the extent of 4.30 lakhs and as an employee forming part of th said department, the Management has every reason to believe that th petitioner was also reasonable as it is seen in Ex.W.1. While tha being so, that even though the petitioner cannot be stated to hav been entrusted with the stock or materials so as to make him liabl for the conduct of theft, it was nevertheless his duty to inform th Management about the shortage, when it is an admitted case that he wa aware of the shortage, even though he would not tell the magnitude o shortage. By correlating this fact along with the nature of charg which is abetment, certainly, one can come to a reasonable conclusio that by the conduct of the petitioner not even informing the secon respondent about the shortage at the relevant point of time, there i every reasonable possibility on the part of the second respondent t have suspicion about the petitioner. It is in those circumstances the Labour Court in the award has correctly come to the conclusio that the order of the second respondent in discharging the petitione from service is not invalid.

11. The submission made by the learned counsel for the petitione about the want of evidence or no evidence in respect of implication o the petitioner into the charge, in my considered view is not

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relevant fact. Considering the above said circumstances, eve assuming that the evidence of M.Ws.1 and 2 before the domestic enquir has not directly attributed the petitioner and that no one of th witnesses on the Management side have ever seen the petitioner i abetting himself with the other employees for committing theft, in th teeth of the specific admission by the petitioner that he was aware o shortages, I am of the considered view that shortfall of evidenc against the petitioner in the domestic enquiry through M.Ws.1, 2 and does not matter much. The suspicion of the employer - the secon respondent about the involvement of the petitioner in abetting th conduct of theft by other employees is fortified by the very admissio of the petitioner during cross examination and especially in th circumstance the procedure followed by the Enquiry Officer during th domestic enquiry is not questioned and in fact an endorsement to th effect that preliminary objection is given up. This shows that th petitioner has lost the confidence of the employer. When once th honesty of the employee is suspected which has got some legal basis and the same is bona fide, the petitioner being a person who was als working at Stores certainly loses the trust and confidence of th employer, when it is not at all in dispute that the theft has bee committed from the Stores Department and in such circumstances, th suspicion of the employer in the integrity of the petitioner cannot b said to be whimsical. This view as correctly pointed out by th learned counsel for the second respondent was the decision of thi Court rendered by R.Jayasimha Babu,J. (as he then was) in Assistan General Manager, T.I. Cycles of India Ltd. vs. Presiding Officer Labour Court and another reported in 2003(2)LLN 796. That was a cas wherein the employer charge sheeted the workman who was a watchman charging him with complicity in theft of the materials belonging t the employer. There also, after the domestic enquiry, the workma was terminated from service. The learned Judge while referring to th judgments of the Apex Court reported in:

(1)1975(2)LLN 426 [Chembur Co-operative Industrial Estate, Ltd. v M.K.Chhatre]

(2) AIR 1971 SC 2414[Francis Klein and Company (Private) Ltd. v. Thei Workmen]

(3) 1975 (1) LLN 261 [L.Michael v. Johnson Pumps India, Ltd.]

(4) 1989 (2) LLN 325 [T.I.Miller v. Additional Labour Court]

held that even though there was a finding that the charge against th employee had not been proved, nevertheless upheld the employer's ple that the employer had lost confidence in the employee and awarde compensation. The learned Judge ultimately set aside the award of th Labour Court directing reinstatement of the workman with back wage and has directed a compensation of Rs.1,25,000/- to be paid.

12. On the facts of the said case which also resembles like th present case, the learned Judge has observed as follows in paragrap No.9:

"In this case what is material is the position held by

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the workman, whether it was a position of trust and confidence and whether the employer acted bona fide honestly and objectively and had some basis of doing so. The fact that the employee workman is a watchman by itself would show that he is occupying a position of trust and confidence. The suspicion regarding the employee's conduct and integrity cannot be said to be merely whimsical or fanciful as the employer had before it the report from a responsible police officer of the rank of Superintendent of Police wherein he had stated the result of the enquiry which showed the association of the workman with a receiver of stolen goods and his complicity in committing theft of the property from the factory of the employer."

and ultimately decided in paragraph No.14 as follows:

"14. Having regard to the amounts already drawn by the employee - workman and having regard to what had been paid over to the other employee, and taking note of the erosion in the value of the rupee in the recent past, the employer is directed to pay to the workman concerned a sum of Rs.1,25,000/- (Rupees one lakh twenty-five thousand only). The sum of Rs.1 lakh already deposited shall be allowed to be withdrawn by the workman. The employer shall in addition pay a sum of Rs.25,000/-. Counsel for the employer says that the employer will hand over that amount directly to the workman with a week's time."

As laid down by the Apex Court in the judgment reported in 1985 I LLN 582, cited supra, it is necessary to have the disciplinar proceeding as a conditional precedent before terminating th petitioner on the ground of loss of confidence. The Apex Court ha held as follows in paragraph No.8:

"It is difficult to agree with the finding of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence...."

13. On the facts and circumstances of the case which I hav narrated above, especially in the teeth of the admission of th petitioner about his knowledge about the shortage in the Stores i which he was also working, I do not think that the judgment of thi Court relied upon by the learned counsel for the petitioner rendere

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by the Division Bench reported in 1998(3)LLN 878 [India Pistons Ltd vs. C.Kumaraswamy and another] has any application. That was the cas wherein, the Division Bench has found that there was no material t suggest that the Management could say that they have lost confidenc in the worker. But that is not the fact in the present case.

14. In these circumstances, I am of the considered view that th award of the Labour Court does not warrant any interference. However in respect of payment of compensation, as I have stated earlier, it i not disputed by the second respondent that Janakiraman who wa actually incharge of the Stores as a Mazdoor who was also the firs accused in the criminal case was paid around Rs.8,00,000/- a compensation for his 22 years of service. As far as the petitioner i the present case is concerned, he has been working admittedly for 5/1 2 years. By considering the above said fact and also taking int consideration the present cost of living, I am of the considered vie that an amount of Rs.40,000/- directed to be paid by the Labour Cour as a compensation to the petitioner has to be increased. Accordingly while upholding the validity of the award of the Labour Court passe in I.D.No.841 of 1990 dated 31.03.1991, the amount of compensatio directed by the Labour Court is modified to Rs.1,00,000/- instead o Rs.40,000/- with a direction to the second respondent to pay the sai amount of Rs.1,00,000/- as a compensation in lieu of the service rendered by the petitioner. This writ petition is ordere accordingly. No costs.

gms

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Presiding Officer,
   I Addl. Labour Court,
   High Court Buildings,
   Chennai 104.

1 CC TO MR.KM. RAMESH, ADVOCATE SR 54302
1 CC TO M/S RAMASUBRAMANIAN, ADVOCATE SR 54587

Order in

AKM(CO)

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